

**FINAL**  
**VIRGINIA BOARD OF OPTOMETRY**  
**SPECIAL CONFERENCE COMMITTEE**

**TIME & PLACE:** January 9, 2006 at 10:08 a.m., at the Department of Health Professions, 6606 West Broad Street, 5<sup>th</sup> Floor, Room 4, Richmond, Virginia.

**MEMBERS PRESENT:** David H. Hettler, O.D.  
Gregory P. Jellenek, O.D.

**STAFF PRESENT:** Elizabeth A. Carter, Ph.D., Executive Director  
Emily Wingfield, Assistant Attorney General,  
Board Counsel  
Jane Smith, Adjudication Analyst, APD  
Terri Behr, Administrative Assistant

**OTHERS PRESENT:** Peter Hollis, O.D., Doctors Vision Center  
Ken Hollis, Doctors Vision Center

**MATTER SCHEDULED:** **Jeffrey A. Sterling, O.D., 0618001359**  
**Case Number 98255**  
Dr. Sterling was present and represented by Co-Counsel, Tom Stallings and Caroline Stalker.

**PRELIMINARY MATTER:** The conference was conducted to discuss allegations of violation of statutes 54.1-3205(B), 54.1-3205.1 and 54.1-3215 (13) (15) and (17) of the Code governing the practice of optometry in the Commonwealth of Virginia. The allegations are as follows:

1. Dr. Sterling may have violated § 54.1-3205(B), § 54.1-3205.1, and § 54.1-3215 (13), (15), and (17) of the Code, in that, on or about July 7, 2004, you worked at Doctors Vision Center, located in Emporia, Virginia, while being employed and directed by Doctors Vision Center, a company whose principal place of business is located in North Carolina. In Section 19, page 10, of the Employment Agreement ("Agreement") dated May 1, 2004, between Dr. Sterling and Doctors Vision Center, it states that "Employer always shall have the power not only to dictate to the Employee what duties shall be performed but also when such duties shall be performed... Employer shall direct what days as well as how many hours during each day the Employee shall perform the duties hereunder." Additionally, Section 23, page 11, of the Agreement

states that all patient records shall belong to the Employer.

2. Dr. Sterling may have violated § 54.1-3215 (17) of the Code, and 18 VAC 105-20-40(1) of the Regulations of the Virginia Board of Optometry, in that, on or about July 7, 2004, an advertisement in the Independent-Messenger newspaper failed to include the word "optometrist," the abbreviation "O.D.," or the words "doctor of optometry" in connection with your name.

After discussing the allegations in the Notice with Dr. Sterling, the Committee convened in closed session for deliberations pursuant to Section 2.2-3711.A (15) of the Code of Virginia. Having certified that the matters discussed in the preceding closed session met the requirements of Section 2.1-3712 of the Code, the Committee re-convened and announced its decision.

#### **DECISION:**

After consideration of the evidence and statements concerning the allegations, the Committee voted to adopt findings of fact and conclusions of law and issued an Order.

#### **Findings of Fact:**

1. Dr. Sterling violated § 54.1-3205(B), § 54.1-3205.1, and § 54.1-3215 (13), (15), and (17) of the Code, in that, on or about July 7, 2004, he worked at Doctors Vision Center, located in Emporia, Virginia, while being employed and directed by Doctors Vision Center ("DVC"), a company whose principal place of business is located in North Carolina. In Section 19, page 10, of the Employment Agreement ("Agreement") dated May 1, 2004, between Sterling and DVC, it states that "Employer always shall have the power not only to dictate to the Employee what duties shall be performed but also when such duties shall be performed... Employer shall direct what days as well as how many hours during each day the Employee shall perform the duties hereunder." Additionally, Section 23, page 11 of the Agreement states that all patient records shall belong to the Employer.

2. Dr. Sterling violated § 54.1-3215 (17) of the Code, and 18 VAC 105-20-40(1) of the Regulations of the Virginia Board of Optometry, in that, on or about July 7, 2004, an advertisement in the Independent-Messenger newspaper failed to

include the word "optometrist," the abbreviation "OD" or the words "doctor of optometry" in connection with his name.

3. Dr. Sterling admitted that the Agreement is not in compliance with the Board's statutes.

4. Dr. Sterling is practicing in a commercial or mercantile establishment.

5. Doctors Vision Center is a North Carolina corporation. Ken Hollis is the present CEO and a member of the Board. Mr. Hollis is not an optometrist or physician.

6. Peter Hollis, O.D., is the majority stock holder of DVC and is licensed to practice optometry in North Carolina. He stated to the Committee that he is not currently eligible for licensure by endorsement in Virginia.

7. Representatives of DVC proposed to the Committee that a majority of the shareholders of DVC become licensed to practice optometry or medicine in Virginia. Virginia licensure of the shareholders of DVC will not negate the prohibition of practicing in a commercial or mercantile establishment.

8. The Committee has concerns about the potential for fee-splitting with persons who are not licensed optometrists, which is prohibited by § 54.1-3215(14) of the Code, because of statements made to the Committee that indicate that compensation may be related to productivity.

9. The Committee has concerns about the potential for fee-splitting with persons who are not licensed optometrists, which is prohibited by § 54.1-3215(14) of the Code, because of statements made to the Committee that indicate that compensation may be related to productivity.

#### **Order**

1. Within 30 days of entry of the Order, Jeffrey A. Sterling, O.D., shall submit evidence satisfactory to the Committee that he is no longer practicing in a commercial or mercantile establishment.

2. Dr. Sterling shall be assessed a monetary penalty of Two Hundred and Fifty Dollars (\$250.00),

*As provided by law, this decision shall become a final Order thirty days after service of such Order on Dr. Sterling unless a written request to the Board for a formal hearing on the allegations made against him is received from Dr. Sterling within such time. If service of the Order is made*

*by mail, three additional days shall be added to that period. Upon such timely request for a formal hearing, the decision of this Special Conference Committee shall be vacated.*

**ADJOURNMENT:**

The conference adjourned at 12:50 p.m.

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David H. Hettler, O.D.  
Chair

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Elizabeth A. Carter, Ph.D.  
Executive Director

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**TIME & PLACE:** January 9, 2006 at 10:08 a.m., at the Department of Health Professions, 6606 West Broad Street, 5<sup>th</sup> Floor, Room 4, Richmond, Virginia.

**MEMBERS PRESENT:** David H. Hettler, O.D.  
Gregory P. Jellenek, O.D.

**STAFF PRESENT:** Elizabeth A. Carter, Ph.D., Executive Director  
Emily Wingfield, Assistant Attorney General,  
Board Counsel  
Jane Smith, Adjudication Analyst, APD  
Terri Behr, Administrative Assistant

**OTHERS PRESENT:** Peter Hollis, O.D., Doctors Vision Center  
Ken Hollis, Doctors Vision Center

**MATTER SCHEDULED:** **David M. Mitchell, O.D., 0618001395**  
**Case Number 98253**  
Dr. Mitchell was present and represented by Co-Counsel, Tom Stallings and Caroline Stalker.

**PRELIMINARY MATTER:** The conference was conducted to discuss allegations of violation of statutes 54.1-3205(B), 54.1-3205.1 and 54.1-3215 (13) (15) and (17) of the Code governing the practice of optometry in the Commonwealth of Virginia. The allegations are as follows:

1. Dr. Mitchell may have violated § 54.1-3205(B), § 54.1-3205.1, and § 54.1-3215 (13), (15), and (17) of the Code, in that, on or about July 7, 2004, you worked at Doctors Vision Center, located in Emporia, Virginia, while being employed and directed by Doctors Vision Center, a company whose principal place of business is located in North Carolina. In Section 19, page 10, of the Employment Agreement ("Agreement") dated May 1, 2004, between Dr. Mitchell and Doctors Vision Center, it states that "Employer always shall have the power not only to dictate to the Employee what duties shall be performed but also when such duties shall be performed... Employer shall direct what days as well as how many hours during each day the Employee shall perform the duties hereunder." Additionally, Section 23, page 11, of

the Agreement states that all patient records shall belong to the Employer.

2. Dr. Mitchell may have violated § 54.1-3215 (17) of the Code, and 18 VAC 105-20-40(1) of the Regulations of the Virginia Board of Optometry, in that, on or about July 7, 2004, an advertisement in the Independent-Messenger newspaper failed to include the word "optometrist," the abbreviation "O.D.," or the words "doctor of optometry" in connection with your name.

After discussing the allegations in the Notice with Dr. Mitchell, the Committee convened in closed session for deliberations pursuant to Section 2.2-3711.A (15) of the Code of Virginia. Having certified that the matters discussed in the preceding closed session met the requirements of Section 2.1-3712 of the Code, the Committee reconvened and announced its decision.

#### **DECISION:**

After consideration of the evidence and statements concerning the allegations, the Committee voted to adopt findings of fact and conclusions of law and issued an Order.

#### **Findings of Fact:**

1. Dr. Mitchell violated § 54.1-3205(B), § 54.1-3205.1, and § 54.1-3215 (13), (15), and (17) of the Code, in that, on or about July 7, 2004, he worked at Doctors Vision Center, located in Emporia, Virginia, while being employed and directed by Doctors Vision Center ("DVC"), a company whose principal place of business is located in North Carolina. In Section 19, page 10, of the Employment Agreement ("Agreement") dated May 1, 2004, between Dr. Mitchell and DVC, it states that "Employer always shall have the power not only to dictate to the Employee what duties shall be performed but also when such duties shall be performed... Employer shall direct what days as well as how many hours during each day the Employee shall perform the duties hereunder." Additionally, Section 23, page 11 of the Agreement states that all patient records shall belong to the Employer.

2. Dr. Mitchell violated § 54.1-3215 (17) of the Code, and 18 VAC 105-20-40(1) of the Regulations of the Virginia Board of Optometry, in that, on or about July 7, 2004, an advertisement in the Independent-Messenger newspaper failed to

include the word "optometrist," the abbreviation "OD" or the words "doctor of optometry" in connection with his name.

3. Dr. Mitchell admitted that the Agreement is not in compliance with the Board's statutes.

4. Dr. Mitchell is practicing in a commercial or mercantile establishment.

5. Doctors Vision Center is a North Carolina corporation. Ken Hollis is the present CEO and a member of the Board. Mr. Hollis is not an optometrist or physician.

6. Peter Hollis, O.D., is the majority stock holder of DVC and is licensed to practice optometry in North Carolina. He stated to the Committee that he is not currently eligible for licensure by endorsement in Virginia.

7. Representatives of DVC proposed to the Committee that a majority of the shareholders of DVC become licensed to practice optometry or medicine in Virginia. Virginia licensure of the shareholders of DVC will not negate the prohibition of practicing in a commercial or mercantile establishment.

8. The Committee has concerns about the potential for fee-splitting with persons who are not licensed optometrists, which is prohibited by § 54.1-3215(14) of the Code, because of statements made to the Committee that indicate that compensation may be related to productivity.

9. The Committee has concerns about the potential for fee-splitting with persons who are not licensed optometrists, which is prohibited by § 54.1-3215(14) of the Code, because of statements made to the Committee that indicate that compensation may be related to productivity.

#### **Order**

1. Within 30 days of entry of the Order, David M. Mitchell, O.D., shall submit evidence satisfactory to the Committee that he is no longer practicing in a commercial or mercantile establishment.

2. Dr. Mitchell shall be assessed a monetary penalty of Two Hundred and Fifty Dollars (\$250.00).

*As provided by law, this decision shall become a final Order thirty days after service of such Order on Dr. Mitchell unless a written request to the Board for a formal hearing on the allegations made against him is received from Dr. Mitchell within such time. If service of the Order is made by mail, three additional days shall be added to*

*that period. Upon such timely request for a formal hearing, the decision of this Special Conference Committee shall be vacated.*

**ADJOURNMENT:**

The conference adjourned at 12:50 p.m.

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David H. Hettler, O.D.  
Chair

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Elizabeth A. Carter, Ph.D.  
Executive Director



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Gregory P. Jellenek, O.D.

**STAFF PRESENT:** Elizabeth A. Carter, Ph.D., Executive Director  
Emily Wingfield, Assistant Attorney General,  
Board Counsel  
Jane Smith, Adjudication Analyst, APD  
Terri Behr, Administrative Assistant

**OTHERS PRESENT:** Peter Hollis, O.D., Doctors Vision Center  
Ken Hollis, Doctors Vision Center

**MATTER SCHEDULED:** **Duane K. Binkley, O.D., 0601800504**  
**Case Number 95653**  
Dr. Binkley was present and represented by Co-Counsel, Tom Stallings and Caroline Stalker.

**PRELIMINARY MATTER:** The conference was conducted to discuss allegations of violation of statutes 54.1-3205(B), 54.1-3205.1 and 54.1-3215 (13) (15) and (17) of the Code governing the practice of optometry in the Commonwealth of Virginia. The allegations are as follows:

1. Dr. Binkley may have violated § 54.1-3205(B), § 54.1-3205.1, and § 54.1-3215 (13), (15), and (17) of the Code, in that, for approximately the last two years, you saw patients at two Doctors Vision Centers, located in South Hill, Virginia, and Emporia, Virginia, while being employed and directed by Doctors Vision Center, a company whose principal place of business is located in North Carolina. In Section 24, page 14, of the Employment Agreement ("Agreement") dated February 1, 1995, between Dr. Binkley and Doctors Vision Center, it states that "the Employer always shall have the power not only to dictate to the Employee what duties shall be performed but also when such duties shall be performed... The Employer shall direct what days as well as how many hours during each day the Employee shall

perform the duties hereunder." Additionally, Section 3, page 5, of the Agreement states that all patient records "shall belong to the Employer."

After discussing the allegations in the Notice with Dr. Binkley, the Committee convened in closed session for deliberations pursuant to Section 2.2-3711.A (15) of the Code of Virginia. Having certified that the matters discussed in the preceding closed session met the requirements of Section 2.1-3712 of the Code, the Committee reconvened and announced its decision.

## **DECISION:**

After consideration of the evidence and statements concerning the allegations, the Committee voted to adopt findings of fact and conclusions of law and issued an Order.

### **Findings of Fact:**

1. Dr. Binkley violated § 54.1-3205(B), § 54.1-3205.1, and § 54.1-3215 (13), (15), and (17) of the Code, in that, for approximately the last two years, he saw patients at two Doctors Vision Centers, located in South Hill, Virginia, and Emporia, Virginia, while being employed and directed by Doctors Vision Center ("DVC"), a company whose principal place of business is located in North Carolina. In Section 24, page 14, of the Employment Agreement ("Agreement") dated February 1, 1995, between Dr. Binkley and Doctors Vision Center, it states that "[t]he Employer always shall have the power not only to dictate to the Employee what duties shall be performed but also when such duties shall be performed... The Employer shall direct what days as well as how many hours during each day the Employee shall perform the duties hereunder." Additionally, Section 3, page 5 of the Agreement states that all patient records shall belong to the Employer.
2. Dr. Binkley admitted that the Agreement is not in compliance with the Board's statutes.
3. Dr. Binkley is practicing in a commercial or mercantile establishment.
4. Doctors Vision Center is a North Carolina corporation. Ken Hollis is the present CEO and a member of the Board. Mr. Hollis is not an optometrist or physician.
5. Peter Hollis, O.D., is the majority stock holder of DVC and is licensed to practice optometry in North Carolina. He stated to the Committee that

he is not currently eligible for licensure by endorsement in Virginia.

6. Representatives of DVC proposed to the Committee that a majority of the shareholders of DVC become licensed to practice optometry or medicine in Virginia. Virginia licensure of the shareholders of DVC will not negate the prohibition of practicing in a commercial or mercantile establishment.

7. The Committee has concerns about the potential for fee-splitting with persons who are not licensed optometrists, which is prohibited by § 54.1-3215(14) of the Code, because of statements made to the Committee that indicate that compensation may be related to productivity.

#### **Order**

1. Within 30 days of entry of the Order, Duane K. Binkley, O.D., shall submit evidence satisfactory to the Committee that he is no longer practicing in a commercial or mercantile establishment.

*As provided by law, this decision shall become a final Order thirty days after service of such Order on Dr. Binkley unless a written request to the Board for a formal hearing on the allegations made against him is received from Dr. Binkley within such time. If service of the Order is made by mail, three additional days shall be added to that period. Upon such timely request for a formal hearing, the decision of this Special Conference Committee shall be vacated.*

#### **ADJOURNMENT:**

The conference adjourned at 12:50 p.m.

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David H. Hettler, O.D.  
Chair

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Elizabeth A. Carter, Ph.D.  
Executive Director